

STATE OF TEXAS  
COUNTY OF TRAVIS

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**AMENDMENT 3 TO CONTRACT NUMBER CON0000218**

The **Texas Juvenile Justice Department**, hereinafter **TJJD**, and **Eric's Snacks, 8632 FM 2071, Gainesville, Texas, 76240, Vendor Identification Number #32006179165**, hereinafter **Service Provider**, acknowledge that they have previously entered into a contract for vending machine services for the period of **September 1, 2013**, through **August 31, 2017**. This contract is identified as Contract Number **CON0000218**.

Both parties wish to continue the relationship that exists without a lapse in services. Service Provider agrees to continue to provide services under the aforementioned existing contract, and TJJD agrees to continue to use Service Provider's services during the term of this contract.

Service Provider represents and warrants that the individual signing this Amendment is authorized to sign this document on behalf of Service Provider and to bind Service Provider under this Amendment.

Both parties hereto agree to be bound by the terms of the existing contract and amendments, subject to the following changes:

1. Section **V. GENERAL PROVISIONS, Article 10: Contract Term**, is revised as follows:

**"Article 10: Contract Term**

The initial term of this contract was for a period beginning **September 1, 2013**, through **August 31, 2015**. This contract has been renewed for two (2) years through **August 31, 2017**, and may be renewed for an additional term of two (2) years, provided that both parties agree in writing to do so. Any renewal shall be at the same terms and conditions, plus any approved changes. The rates and services may be renegotiated based on performance and required service delivery."

2. Pursuant to section V. GENERAL PROVISIONS, Article 10: Contract Term, TJJD is hereby exercising its last option to renew the contract term for an additional two (2) years, for the period of **September 1, 2017**, through **August 31, 2019**.
3. The contract is amended as follows under section **IV. CERTIFICATIONS**:
  - a. Article 5 is deleted and replaced in its entirety by the following:

**"Article 5: Human Immunodeficiency Virus Services Act Compliance**

**Section 1:** Service Provider certifies compliance with the Human Immunodeficiency Virus Services Act (Texas Health and Safety Code Chapter 85) requirements for maintenance of confidentiality regarding the human immunodeficiency virus (HIV) and its related conditions, including acquired immune deficiency syndrome (AIDS).

**Section 2:** Service Provider further certifies that workplace guidelines have been developed and implemented in accordance with the Human Immunodeficiency Virus Services Act. Service Provider may elect to use workplace guidelines developed and implemented by TJJD. Should Service Provider not elect to use workplace guidelines developed and implemented by TJJD, Service Provider agrees that its workplace guidelines shall be similar to TJJD's as required by Section 85.113 of the Texas Health and Safety Code.

**Section 3:** In the absence of confidentiality guidelines, Service Provider is not eligible to receive state funds, and Service Provider agrees to refund to the state any state funds Service Provider receives while ineligible."

- b. Articles 14 and 15 are deleted and replaced in their entirety by the following:

#### **"Article 14: Specially Designated Nationals and Blocked Persons List; Debarment**

Service Provider certifies that it is not on the Specially Designated Nationals and Blocked Persons list (SDN List) maintained by the United States Department of the Treasury Office of Foreign Assets Control (OFAC), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

Service Provider certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Service Provider is in compliance with the State of Texas statutes and rules relating to procurement and that Service Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

#### **Article 15: Terrorism**

The TJJD is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001, and any subsequent changes made to it by cross-referencing service providers/vendors with the System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Department of the Treasury Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list (SDN List), also available at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>."

- c. The last paragraph of Article 16 is deleted and replaced in its entirety by the following:

"...The TJJD will approve or deny any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker in accordance with TJJD policies and procedures. The TJJD's designated contact for criminal background checks is the Human Resources Department, Manager of Criminal Background Checks, (512) 490-7674."

- d. Article 24: Debarment, is deleted and replaced with the following:

**"Article 24: RESERVED"**

- e. Article 25 is deleted and replaced in its entirety by the following:

**"Article 25: By signature hereon, Service Provider certifies that:**

All statements and information prepared and submitted in relation to this contract are current, complete, and accurate."

- f. The following additions from Amendment 1 executed September 15, 2015, are incorporated into the contract as Articles 26 and 27:

#### **"Article 26: Compliance with the Prison Rape Elimination Act of 2003 (PREA)**

Service Provider shall comply with the Prison Rape Elimination Act of 2003 (PREA) (42 U.S.C. 15601 et seq.) and with all applicable standards, rules, regulations, and TJJD policies related to PREA. Service Provider shall make itself familiar with and at all times shall observe and comply with all PREA regulations which affect performance in any manner under this contract. Failure to comply with PREA standards, rules, regulations, and TJJD policies may result in termination of this contract.

#### **Article 27: Verification of Worker Eligibility Clause**

1. If Service Provider is not enrolled in the U.S. Department of Homeland Security's E-Verify system ("E-Verify") at the time of this contract award, Service Provider shall:
    - a. Enroll in the E-Verify program within thirty (30) calendar days of contract award; and thereafter
    - b. Use E-Verify to initiate, within three (3) business days after the date of hire, verification of employment eligibility of all of Service Provider's new hires employed during the contract term to perform duties within Texas and all persons (including subcontractors) assigned by Service Provider to perform work, pursuant to this contract, within the United States.
  2. If Service Provider is enrolled in E-Verify at the time of this contract award, Service Provider shall use E-Verify to initiate, within three (3) business days after the date of hire, verification of employment eligibility of all of Service Provider's new hires employed during the contract term to perform duties within Texas and all persons (including subcontractors) assigned by Service Provider to perform work, pursuant to this contract, within the United States.
  3. Service Provider shall comply with the requirements of the E-Verify program Memorandum of Understanding (MOU). If the Department of Homeland Security (DHS) or the Social Security Administration (SSA) terminates Service Provider's MOU and denies access to the E-Verify system in accordance with the terms of the MOU, the TJJD may terminate this contract.
  4. Service Provider shall include the requirements of this clause, including this paragraph (appropriately modified for identification of the parties), in each subcontract under this contract that is for services or construction.
  5. Service Provider shall provide, upon request of the TJJD, an electronic or printed image of the confirmation or non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for each Service Provider employee, subcontractor, and subcontractor employee that meet the criteria above, following any required E-Verify protocols to allow for the provision of such information.
  6. If Service Provider fails to comply with the requirements of this clause, the TJJD may terminate this contract, withhold payment, or impose other administrative error sanctions.
  7. The requirements of this clause only apply to contracts for services or construction."
- g. The following Articles 28 through 30 are added:

**"Article 28: Access to Information**

Service Provider is required to make any information created or exchanged with the TJJD pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552), available in a format that is accessible by the public and at no additional charge to the TJJD. Service Provider agrees to provide the TJJD with this information in a format that is accessible to the public, including, but not limited to, in a non-encrypted electronic format, PDF, and HTML.

**Article 29: Prohibition on Contracts with Companies Boycotting Israel**

If Service Provider is a "company," as defined under Texas Government Code Section 808.001(2), then pursuant to Texas Government Code Section 2270.002, by signing this contract Service Provider certifies that it is a company that does not "boycott Israel," as defined under Texas Government Code Section 808.001(1), and will not do so at any time during the term of this contract.

**Article 30: Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations**

If Service Provider is a "company" as defined as under Texas Government Code Section 806.001, then pursuant to Texas Government Code, Chapter 2252, Subchapter F, Service Provider certifies by signature that it is not a company engaged in business with Iran, Sudan, or a foreign terrorist organization as identified on a list maintained under Texas Government Code Sections 806.051, 807.051, or 2252.153, and thus not prohibited from entering into this contract with TJJD or that it is a company affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan, Iran, or a foreign terrorist organizations."

4. The contract is amended as follows under section **V. GENERAL PROVISIONS:**

- a. Article 1 is deleted and replaced in its entirety with the following:

**"Article 1: Relationship of Parties**

Service Provider is acting as an independent contractor and is wholly responsible for the day-to-day operations of its programs and employees. No joint venture, partnership, or agency exists, nor shall be implied by the terms of this contract. No employee of Service Provider shall become an employee of TJJD by virtue of this contract.

Service Provider agrees and acknowledges that during the existence of this contract, Service Provider shall be entirely responsible for the liability and payment of Service Provider's and Service Provider's employees' taxes of whatever kind, arising out of the performance of this contract. Service Provider agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. TJJD shall not be liable to Service Provider, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a TJJD or other state employee. Further, Service Provider shall indemnify and hold harmless TJJD, state agencies, the State of Texas, and/or their employees, agents, representatives, and/or assignees from any liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses relating to tax liability, unemployment insurance, and/or workers' compensation payments."

- b. The following Section 5 is added under Article 6: Termination:

**"Section 5:** Termination of this contract shall not release Service Provider from liability or obligation set forth in the contract that is expressly stated to survive termination or by its nature would be intended to be applicable following termination, including, but not limited to, provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fee verifications."

- c. Article 7 is deleted and replaced in its entirety with the following:

**"Article 7: Funding Out Clause**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply. In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. This contract is subject to termination, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature."

- d. Article 18 is deleted and replaced in its entirety with the following:

**"Article 18: Audit Clause**

Pursuant to Chapter 321 of the Texas Government Code and Texas Government Code Section 2262.154, Service Provider is hereby notified that, the Texas State Auditor's Office (State Auditor) may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under that contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Service Provider shall ensure that this paragraph, concerning the State


Auditor's authority to audit funds received indirectly by subcontractors through Service Provider and the requirement to cooperate, is included in any subcontract it awards.

Service Provider shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with TJJD and State of Texas requirements. Service Provider shall maintain all such documents and other records relating to this contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Service Provider shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this contract, for purposes of inspecting, monitoring, auditing, or evaluating by the TJJD, the State of Texas, or their authorized representatives. Service Provider shall cooperate with auditors and other authorized TJJD and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by the TJJD or the State of Texas. Service Provider's failure to comply with this Article shall constitute a material breach of this contract and shall authorize the TJJD to immediately assess liquidated damages. The TJJD may require, at Service Provider's sole cost and expense, independent audits by a qualified certified public accounting firm of Service Provider's books and records or the State's property. The independent auditor shall provide the TJJD with a copy of such audit at the same time it is provided to Service Provider. The TJJD retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this contract.

The TJJD may unilaterally amend this contract to comply with any rules and procedures of the State Auditor."

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment as of the day and year last below written.

For the Texas Juvenile Justice Department:

 8/31/17  
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David Reilly, Executive Director Date

For Service Provider:

 Sandy Geyer owner/operator 8/31/17  
Signature Printed Name Title Date

Approved as to form:

 8/31/17  
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TJJD Attorney Date